

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ALBERT PLANIT	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1974 and 1975.	:	

Petitioner, Albert Planit, 111 Yukon Drive, Woodbury, New York 11797, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1974 and 1975 (File Nos. 802899 and 803158).

A hearing was held before Nigel G. Wright, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on January 12, 1989 at 11:37 A.M. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the deficiency asserted against petitioner on December 23, 1985 was time-barred when it was for withholding taxes of petitioner's employer corporation for withholding periods in 1974 and 1975.

II. Whether a decision of a bankruptcy court dismissing claims for withholding taxes against a corporation is by reason of res judicata or collateral estoppel binding on subsequent claims for such withholding taxes against the same corporation, the petitioner herein.

FINDINGS OF FACT

1. Petitioner, Albert Planit, was sole shareholder and president of Worldco Distributors, Inc. He signed their sales tax returns and issued checks in payment of taxes. He has not contested his liability for any withholding taxes due from Worldco.

2. Worldco Distributors, Inc. was a chain of retail stores selling housewares and giftwares on Long Island. In 1975 it had 18 stores. Each store had from 4 to 10 employees. Beginning in

1974, the energy crisis caused rents in shopping malls to escalate tremendously. One mall sued for back rent from Worldco. In 1975, Worldco filed for protection under Chapter 11 of the Bankruptcy Act. Mr. Planit claims the reason for this was to avoid the _____ on a number of stores.

3. A plan or reorganization was submitted by Worldco on March 16, 1977. During the course of the Chapter 11 proceedings, the State Tax Commission filed a claim (No. 21) for \$828.31, another claim (No. 101) for \$26,180.32 and another claim (No. 105) for \$22,045.39. The first and third such claims were expunged by court order dated March 22, 1979. Mr. Planit claims that the court did this after it made repeated demands, to no avail, for the State Tax Commission to state the nature of its claims.

4. The plan of reorganization was confirmed on September 10, 1981 by the Bankruptcy Court for the Eastern District of Long Island. The last day to file claims was set at October 21, 1981. The plan provided for all priority creditors, including taxing authorities, to be paid in full.

5. Worldco was discharged from bankruptcy sometime in 1981. It continued in business for a while with merely one store. It ceased doing business in 1983 or 1984.

6. (a) A Notice of Deficiency and a Statement of Deficiency was issued against petitioner on December 23, 1985 with regard to the withholding taxes of Worldco Distributors, Inc. of 890 Sunrise Mall, Massapequa, New York. This was in the following periods and amounts:

April 1974	\$ 309.40
July 1974 through October 1974	1,313.70
December 1974	602.00
January 1975 and February 1975	1,013.20
April 1975 and May 1975	<u>756.50</u>
Total	\$4,000.80

(b) A second Statement of Deficiency was issued on March 31, 1986. This was for the following periods and amounts:

July through September 1974	\$1,113.70
May 1975	<u>249.50</u>
Total	\$1,363.20

(c) This second statement has omitted amounts including in the first statement as follows:

April 1974	\$ 309.40
October 1974	200.00
December 1974	608.00
January and February 1975	1,013.20
April 1975	<u>507.00</u>
Total	\$2,637.60

7. The claims for withholding taxes here assessed against Mr. Planit appear listed on the State's worksheets for claims in bankruptcy against Worldco. These worksheets are dated

September 19, 1975. The amounts stated to be due for each monthly reporting period are in such amounts that they appear not to be mere estimates. It is accordingly found that Worldco did file withholding tax returns and did so sometime prior to 1976.